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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,852	01/16/2004	Quenton Lanier Gilbert	037-0012	8743

52218 7590 03/21/2007  
ZAGORIN O'BRIEN GRAHAM LLP (037)  
7600B NORTH CAPITAL OF TEXAS HIGHWAY  
SUITE 350  
AUSTIN, TX 78731-1191

EXAMINER
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FERGUSON, KEITH

ART UNIT	PAPER NUMBER
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2618

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/21/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

**Application No.**

10/759,852

**Applicant(s)**

GILBERT, QUENTON LANIER

**Examiner**

Keith T. Ferguson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 26 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 6-21, 25, 27 is/are allowed.
- 6) ☒ Claim(s) 5, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Fostik et al..

The claimed invention reads on Fostik et al. as follows:

Regarding claim 5, Fostik et al. discloses a method (fig. 2) for communicating short messages (P:0045) comprising: forwarding an electronic message to an another address (first communication device)( P:0045 lines 1-3), the forwarding in response to at least an indication of unsuccessful delivery of a short message service (P:0045 lines 1-3), (SMS) message to a destination communication device (handset) (P:0045 lines 1-11), wherein the forwarding in enabled from a web-base provision application (web browser) (P:0045 lines 1-19).

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Regarding claim 24, Fostik et al. discloses deleting (removing) an undelivered message in a SMSC (queue) (P:0045 lines 1-25).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fostik et al. in view of Kransmo et al..

Regarding claim 5, Fostik et al. discloses a method as discussed supra in claim 5 above. Fostik et al. differs from claim 23 of the claimed invention in that it does not explicit disclose formatting the electronic message as a message having a format compatible with the first communications device. Kransmo et al. teaches formatting a mode that is compatible with originating mobile station (180) (P:0030 line 1 through P:0031 line 8). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Fostik et al. with formatting the electronic message as a message having a format compatible with the first communications device in order for the forwarding the SMS message to the another

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address to be compatible to receive the SMS message, as taught Kransmo et al..

***Allowable Subject Matter***

5. Claims 1-4,6-21,25 and 27 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: Upon close review of the claims, the prior art of record and applicants remarks in the Amendment on page 6 line 22 through Page 10 line 10 mailed December 26, 2006, it appears that the allowance of claims 1-4,6-21,25 and 27 is appropriate.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith T. Ferguson whose telephone number is (571) 272-7865. The examiner can normally be reached on 6:30am-4:30 pm.

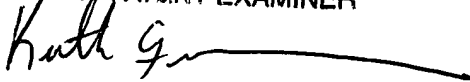
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (571) 272-7899. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Keith Ferguson  
Art Unit 2618  
March 9, 2007

KEITH FERGUSON  
PRIMARY PATENT EXAMINER

A handwritten signature in black ink, appearing to read "Keith G.", followed by a long horizontal flourish line.